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1
2 An act relating to wireless communications while
3 driving; amending s. 316.305, F.S.; revising
4 legislative intent; requiring a law enforcement
5 officer to inform a motor vehicle operator of certain
6 rights; prohibiting certain actions by such officer;
7 requiring such officer to record the race and
8 ethnicity of a violator when issuing a citation;
9 requiring law enforcement agencies to report such
10 information to the Department of Highway Safety and
11 Motor Vehicles; requiring the department to annually
12 report certain data to the Governor and Legislature;
13 removing the requirement that enforcement be
14 accomplished as a secondary action; creating s.
15 316.306, F.S.; defining the term "wireless
16 communications device"; providing legislative intent;
17 prohibiting a person from operating a motor vehicle
18 while using a wireless communications device in a
19 handheld manner in a designated school crossing,
20 school zone, or work zone; providing applicability;
21 providing construction; authorizing a law enforcement
22 officer during a specified period to stop motor
23 vehicles to issue warnings to persons who are driving
24 while using a wireless communications device in a
25 handheld manner in a designated school crossing,

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26 | school zone, or work zone; providing for repeal of
27 | that authorization; authorizing a law enforcement
28 | officer, on and after a specified date, to stop motor
29 | vehicles and issue citations to persons who are
30 | driving while using a wireless communications device
31 | in a handheld manner in a designated school crossing,
32 | school zone, or work zone; providing exceptions to
33 | such prohibition; requiring a law enforcement officer
34 | who stops a motor vehicle for a violation of driving
35 | while using a wireless communications device in a
36 | handheld manner in a designated school crossing,
37 | school zone, or work zone to inform the motor vehicle
38 | operator of his or her right to decline a search of
39 | his or her wireless communications device; prohibiting
40 | the law enforcement officer from taking specified
41 | actions; requiring certain consent to search a motor
42 | vehicle operator's wireless communications device;
43 | providing that a user's billing records for a wireless
44 | communications device or the testimony of or written
45 | statements from certain authorities are admissible as
46 | evidence in crashes resulting in death or serious
47 | bodily injury for certain purposes; requiring that law
48 | enforcement officers indicate specified information in
49 | the uniform traffic citation; providing penalties for
50 | driving while using a wireless communications device

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51 in a handheld manner in a designated school crossing,
52 school zone, or work zone; authorizing first-time
53 offenders to participate in a wireless communications
54 device driving safety program, in lieu of the
55 imposition of penalties; authorizing a clerk of the
56 court to dismiss a case and assess court costs under
57 certain circumstances; requiring the deposit of fines
58 into the Emergency Medical Services Trust Fund of the
59 Department of Health; requiring law enforcement
60 officers to record the race and ethnicity of violators
61 when issuing a citation for a violation of this
62 section; requiring all law enforcement agencies to
63 maintain such information and report it to the
64 Department of Highway Safety and Motor Vehicles in a
65 form and manner determined by the department;
66 beginning on a specified date, requiring the
67 department to annually report the data to the Governor
68 and Legislature; providing requirements for the
69 report; authorizing the department, in consultation
70 with the Department of Transportation, to implement a
71 statewide campaign to raise awareness of and encourage
72 compliance with the prohibitions on operating a motor
73 vehicle while using a wireless communications device;
74 authorizing the department to use certain messaging to
75 implement the campaign; authorizing the department to

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76 contract with certain entities for certain purposes;
 77 providing effective dates.

78

79 Be It Enacted by the Legislature of the State of Florida:

80

81 Section 1. Paragraph (d) of subsection (2) and subsections
 82 (3) and (5) of section 316.305, Florida Statutes, are amended to
 83 read:

84 316.305 Wireless communications devices; prohibition.—

85 (2) It is the intent of the Legislature to:

86 (d) Authorize law enforcement officers to stop motor
 87 vehicles and issue citations ~~as a secondary offense~~ to persons
 88 who are texting while driving.

89 (3) (a) A person may not operate a motor vehicle while
 90 manually typing or entering multiple letters, numbers, symbols,
 91 or other characters into a wireless communications device or
 92 while sending or reading data on such a device for the purpose
 93 of nonvoice interpersonal communication, including, but not
 94 limited to, communication methods known as texting, e-mailing,
 95 and instant messaging. As used in this section, the term
 96 "wireless communications device" means any handheld device used
 97 or capable of being used in a handheld manner, that is designed
 98 or intended to receive or transmit text or character-based
 99 messages, access or store data, or connect to the Internet or
 100 any communications service as defined in s. 812.15 and that

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101 allows text communications. For the purposes of this paragraph,
 102 a motor vehicle that is stationary is not being operated and is
 103 not subject to the prohibition in this paragraph.

104 (b) Paragraph (a) does not apply to a motor vehicle
 105 operator who is:

106 1. Performing official duties as an operator of an
 107 authorized emergency vehicle as defined in s. 322.01, a law
 108 enforcement or fire service professional, or an emergency
 109 medical services professional.

110 2. Reporting an emergency or criminal or suspicious
 111 activity to law enforcement authorities.

112 3. Receiving messages that are:

113 a. Related to the operation or navigation of the motor
 114 vehicle;

115 b. Safety-related information, including emergency,
 116 traffic, or weather alerts;

117 c. Data used primarily by the motor vehicle; or

118 d. Radio broadcasts.

119 4. Using a device or system for navigation purposes.

120 5. Conducting wireless interpersonal communication that
 121 does not require manual entry of multiple letters, numbers, or
 122 symbols, except to activate, deactivate, or initiate a feature
 123 or function.

124 6. Conducting wireless interpersonal communication that
 125 does not require reading text messages, except to activate,

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126 deactivate, or initiate a feature or function.

127 7. Operating an autonomous vehicle, as defined in s.
128 316.003, in autonomous mode.

129 (c) A law enforcement officer who stops a motor vehicle
130 for a violation of paragraph (a) must inform the motor vehicle
131 operator of his or her right to decline a search of his or her
132 wireless communications device and may not:

133 1. Access the wireless communications device without a
134 warrant.

135 2. Confiscate the wireless communications device while
136 awaiting issuance of a warrant to access such device.

137 3. Obtain consent from the motor vehicle operator to
138 search his or her wireless communications device through
139 coercion or other improper method. Consent to search a motor
140 vehicle operator's wireless communications device must be
141 voluntary and unequivocal.

142 (d)~~(e)~~ Only in the event of a crash resulting in death or
143 personal injury, a user's billing records for a wireless
144 communications device or the testimony of or written statements
145 from appropriate authorities receiving such messages may be
146 admissible as evidence in any proceeding to determine whether a
147 violation of paragraph (a) has been committed.

148 (5) When a law enforcement officer issues a citation for a
149 violation of this section, the law enforcement officer must
150 record the race and ethnicity of the violator. All law

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151 enforcement agencies must maintain such information and report
 152 the information to the department in a form and manner
 153 determined by the department. Beginning February 1, 2020, the
 154 department shall annually report the data collected under this
 155 subsection to the Governor, the President of the Senate, and the
 156 Speaker of the House of Representatives. The data collected must
 157 be reported at least by statewide totals for local law
 158 enforcement agencies, state law enforcement agencies, and state
 159 university law enforcement agencies. The statewide total for
 160 local law enforcement agencies shall combine the data for the
 161 county sheriffs and the municipal law enforcement agencies.
 162 ~~Enforcement of this section by state or local law enforcement~~
 163 ~~agencies must be accomplished only as a secondary action when an~~
 164 ~~operator of a motor vehicle has been detained for a suspected~~
 165 ~~violation of another provision of this chapter, chapter 320, or~~
 166 ~~chapter 322.~~

167 Section 2. Effective October 1, 2019, section 316.306,
 168 Florida Statutes, is created to read:

169 316.306 School and work zones; prohibition on the use of a
 170 wireless communications device in a handheld manner.-

171 (1) For purposes of this section, the term "wireless
 172 communications device" has the same meaning as provided in s.
 173 316.305(3)(a). The term includes, but is not limited to, a cell
 174 phone, a tablet, a laptop, a two-way messaging device, or an
 175 electronic game that is used or capable of being used in a

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176 handheld manner. The term does not include a safety, security,
177 or convenience feature built into a motor vehicle which does not
178 require the use of a handheld device.

179 (2) It is the intent of the Legislature to:

180 (a) Improve roadway safety in school and work zones for
181 all vehicle operators, vehicle passengers, bicyclists,
182 pedestrians, and other road users.

183 (b) Prevent crashes related to the act of driving while
184 using a wireless communications device in a handheld manner when
185 operating a motor vehicle while the vehicle is in motion.

186 (c) Reduce injuries, deaths, property damage, health care
187 costs, health insurance rates, and automobile insurance rates
188 related to motor vehicle crashes.

189 (d) Authorize law enforcement officers to stop motor
190 vehicles and issue citations to persons who are driving in
191 school or work zones while using a wireless communications
192 device in a handheld manner as provided in subsection (3).

193 (3) (a) 1. A person may not operate a motor vehicle while
194 using a wireless communications device in a handheld manner in a
195 designated school crossing, school zone, or work zone area as
196 defined in s. 316.003(101). This subparagraph shall only be
197 applicable to work zone areas if construction personnel are
198 present or are operating equipment on the road or immediately
199 adjacent to the work zone area. For the purposes of this
200 paragraph, a motor vehicle that is stationary is not being

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201 operated and is not subject to the prohibition in this
 202 paragraph.

203 2.a. During the period from October 1, 2019, through
 204 December 31, 2019, a law enforcement officer may stop motor
 205 vehicles to issue verbal or written warnings to persons who are
 206 in violation of subparagraph (a)1. for the purposes of informing
 207 and educating such persons of this section. This sub-
 208 paragraph shall stand repealed on October 1, 2020.

209 b. Effective January 1, 2020, a law enforcement officer
 210 may stop motor vehicles and issue citations to persons who are
 211 driving while using a wireless communications device in a
 212 handheld manner in violation of subparagraph (a)1.

213 (b) Paragraph (a) does not apply to a motor vehicle
 214 operator who is:

215 1. Performing official duties as an operator of an
 216 authorized emergency vehicle as defined in s. 322.01, a law
 217 enforcement or fire service professional, or an emergency
 218 medical services professional.

219 2. Reporting an emergency or criminal or suspicious
 220 activity to law enforcement authorities.

221 3. Receiving messages that are:

222 a. Related to the operation or navigation of the motor
 223 vehicle;

224 b. Safety-related information, including emergency,
 225 traffic, or weather alerts;

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226 c. Data used primarily by the motor vehicle; or
 227 d. Radio broadcasts.
 228 4. Using a device or system in a hands-free manner for
 229 navigation purposes.
 230 5. Using a wireless communications device hands-free or
 231 hands-free in voice-operated mode, including, but not limited
 232 to, a factory-installed or after-market Bluetooth device.
 233 6. Operating an autonomous vehicle, as defined in s.
 234 316.003, in autonomous mode.
 235 (c) A law enforcement officer who stops a motor vehicle
 236 for a violation of paragraph (a) must inform the motor vehicle
 237 operator of his or her right to decline a search of his or her
 238 wireless communications device and may not:
 239 1. Access the wireless communications device without a
 240 warrant.
 241 2. Confiscate the wireless communications device while
 242 awaiting issuance of a warrant to access such device.
 243 3. Obtain consent from the motor vehicle operator to
 244 search his or her wireless communications device through
 245 coercion or other improper method. Consent to search a motor
 246 vehicle operator's wireless communications device must be
 247 voluntary and unequivocal.
 248 (d) Only in the event of a crash resulting in death or
 249 serious bodily injury, as defined in s. 316.027, may a user's
 250 billing records for a wireless communications device, or the

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251 testimony of or written statements from appropriate authorities
252 receiving such messages, be admissible as evidence in any
253 proceeding to determine whether a violation of subparagraph
254 (a)1. has been committed.

255 (e) Law enforcement officers must indicate the type of
256 wireless communications device in the comment section of the
257 uniform traffic citation.

258 (4) (a) Any person who violates this section commits a
259 noncriminal traffic infraction, punishable as a moving
260 violation, as provided in chapter 318, and shall have 3 points
261 assessed against his or her driver license as set forth in s.
262 322.27(3) (d)7. For a first offense under this section, in lieu
263 of the penalty specified in s. 318.18 and the assessment of
264 points, a person who violates this section may elect to
265 participate in a wireless communications device driving safety
266 program approved by the Department of Highway Safety and Motor
267 Vehicles. Upon completion of such program, the penalty specified
268 in s. 318.18 and associated costs may be waived by the clerk of
269 the court and the assessment of points must be waived.

270 (b) The clerk of the court may dismiss a case and assess
271 court costs in accordance with s. 318.18(11) (a) for a nonmoving
272 traffic infraction for a person who is cited for a first time
273 violation of this section if the person shows the clerk proof of
274 purchase of equipment that enables his or her personal wireless
275 communications device to be used in a hands-free manner.

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276 (5) Notwithstanding s. 318.21, all proceeds collected
 277 pursuant to s. 318.18 for violations of this section must be
 278 remitted to the Department of Revenue for deposit into the
 279 Emergency Medical Services Trust Fund of the Department of
 280 Health.

281 (6) When a law enforcement officer issues a citation for a
 282 violation of this section, the law enforcement officer must
 283 record the race and ethnicity of the violator. All law
 284 enforcement agencies must maintain such information and must
 285 report such information to the department in a form and manner
 286 determined by the department. Beginning February 1, 2020, the
 287 department shall annually report the data collected under this
 288 subsection to the Governor, the President of the Senate, and the
 289 Speaker of the House of Representatives. The data collected must
 290 be reported at least by statewide totals for local law
 291 enforcement agencies, state law enforcement agencies, and state
 292 university law enforcement agencies. The statewide total for
 293 local law enforcement agencies must combine the data for the
 294 county sheriffs and the municipal law enforcement agencies.

295 Section 3. (1) The Department of Highway Safety and Motor
 296 Vehicles, in consultation with the Department of Transportation,
 297 may implement a statewide campaign to raise awareness of and
 298 encourage compliance with ss. 316.305 and 316.306, Florida
 299 Statutes. The Department of Highway Safety and Motor Vehicles
 300 may use television messaging, radio broadcasts, print media,

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301 digital strategies, social media, and any other form of
302 messaging deemed necessary and appropriate by the department to
303 implement the campaign.

304 (2) The Department of Highway Safety and Motor Vehicles
305 may contract with counties, local law enforcement agencies,
306 safety councils, and public schools to assist with planning and
307 conducting the statewide campaign.

308 Section 4. Except as otherwise expressly provided in this
309 act, this act shall take effect July 1, 2019.